APPENDIX

APPELLEES EXHIBIT

IN

CAUSE NO. 16,148

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CONTENTS

AFFIDAVIT OF JOE B. McNIEL

SUPERINTENDENT OF SCHOOLS

WICHITA FALLS, TEXAS

DATED SEPTEMBER 12, 1956*

*Included in Appellees' Brief as an Appendix for convenience of court.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

* * * * *

CAUSE NO. 16,148

ALFRED AVERY, JR., a minor, by his Mother and Next Friend (Mrs.) ALFRED AVERY, et al.,
Appellants,

v.

WICHITA FALLS INDEPENDENT SCHOOL DISTRICT, et al., *Appellees.*

* * * * *

Appeal from the United States District Court for Northern District of Texas

* * * * *

APPELLEE'S EXHIBIT A

Affidavit as to Matters Occurring After Trial in the District Court and Prior to Appeal, Material to Issue of Mootness.

STATE OF TEXAS
COUNTY OF WICHITA, ss:

Joe B. McNiel, being duly sworn, deposes and says:

1. I am superintendent of public schools for the Wichita Falls Independent School District, one of the above named defendants, and I have served in such capacity for the past

nine years. I have attended all board meetings of the School District during the past two years and am personally familiar with the files and records of the Board of Trustees, and with their executive and administrative functions. I have personal knowledge of the matters herein referred to, and make this affidavit to be filed as an exhibit by Appellee in the Cause of Alfred Avery, Jr., a minor, by his Mother and Next Friend (Mrs.) Alfred Avery, et al., Appellants, v. Wichita Falls Independent School District, et al., Appellees, in Cause No. 16,148, in the United States Court of Appeals for the Fifth Circuit.

2. That during the period of time since April 3, 1956, the following things have occurred and the facts exist and existed, all of which are matters of common knowledge in the Wichita Falls area, having been widely publicized:

A. That on April 4, 1956, Mr. Floyd Randel, President of the Wichita Falls Independent School District, issued a public statement which was carried as a front page story in the Wichita Falls Record News on April 5, 1956, and which statement announced that all schools of the Wichita Falls Independent School District would be completely desegregated by September of 1956, or January of 1957 at the latest.

B. That on June 1, 1956, the Wichita Falls Senior High School was opened for its summer session on a non-segregated basis and that 426 students enrolled therein, of which 15 were Negroes.

C. On August 3, 1956, an announcement was made by the Wichita Falls Independent School District and was carried

as a front page story by the Wichita Falls Daily Times and as a front page story by the Wichita Falls Record News on August 4, 1956, and which story referred to the action of the Board of Trustees of the Wichita Falls Independent School District on July 26, 1956, and announced that all schools in the Wichita Falls Independent School District would be opened on a non-segregated basis for the fall semester beginning September 5, 1956.

D. On September 5, 1956, 13,812 pupils enrolled in the schools of the Wichita Falls Independent School District and were admitted to the schools to which they applied for admission without any discrimination as to them because of their color. No Negro children enrolled or applied for admission or reported for attendance to any school except Sheppard Air Force Base school, Booker T. Washington school, and A. E. Holland school.

E. The school census, taken in February of 1956, upon being received by the School District, reflected that there were 30 colored students of school age residing in school districts other than the Booker T. Washington School District which had formerly been a colored segregated school, and the A. E. Holland School District which had formerly been opened to all students within the district on a non-segregated basis but in which no white students had been enrolled during the spring semester of 1956. The census showed such students to reside in the following districts:

Alamo Elementary School—7
Austin Elementary School—1

Ben Franklin Elementary School—6

Fannin Elementary School—2

Sheppard Air Force Base Elementary School—14

F. The Superintendent of Schools and his staff have approved 564 written transfers to date from one School District area operated by them to another. Many of these include transfers arising out of a re-districting wherein numbers of students who had formerly attended two or three years in one school were placed in another School District by such re-districting, but who desired to complete their elementary education in the elementary schools which they had previously attended. Of these, 200 transfers were from the Booker T. Washington District to the Travis School District lying north thereof, and included students, primarily of Latin American descent, who had formerly attended Travis School and for whom available classroom space remained as opposed to more crowded conditions in the Washington School. Except for one transfer from A. E. Holland School District to Austin School by a white child, and except for the 17 transfers applied for by colored children as hereinafter set out, the balance of the transfers involved white students transferring between schools other than the A. E. Holland Elementary School, Booker T. Washington School, Sheppard Air Force Base School, and Travis School:

6 from Holland School to Booker T. Washington School

1 from Sheppard Air Force Base School to Booker T. Washington School

6 from Alamo School to A. E. Holland School
2 from Ben Franklin School to Booker T. Washington School
2 from Fannin School to A. E. Holland School

17 Total transfers of colored children

All written transfers requested to date have been granted. G. It is not known whether the other colored children living in the other school districts at the time of the census in February of 1956 still reside there. It is not known whether they may have "automatically" applied for admission to the schools they attended previously. Preliminary surveys are being made at the present time to determine these matters.

The School Superintendent has asked the counsel for the School District for an opinion as to the District's obligations, if any, in connection with requiring such colored students to transfer back into the schools of the district of their residence, and is awaiting an opinion.

/s/ JOE B. McNIEL

Sworn and subscribed before me this 12th day of September, A.D. 1956.

/s/ CARL HIGHTOWER
(SEAL) Notary Public, Wichita County, Texas

PROOF OF SERVICE

I, R. Marvin Pierce, attorney for Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 6th day of April, 1957, I served copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit on the several parties thereto by mailing two (2) copies thereof in a duly addressed envelope with air mail postage prepaid, via certified mail, to each of their respective attorneys of record as follows: Louis Bedford, 1831 Singleton Blvd., Dallas, Texas; Robert L. Carter, Thurgood Marshall, 107 West 43rd Street, New York, New York; U. Simpson Tate, 2600 Flora Street, Dallas, Texas.

R. Marvin Pierce

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Wichita Falls, Texas,
Attorney for Petitioners.